

Part 7. Risk-based remediation for petroleum releases from aboveground storage tanks and other sources.

§ 143-215.104AA. Standards for petroleum releases from aboveground storage tanks and other sources.

(a) Legislative Findings and Intent.

(1) The General Assembly finds the following:

- a. Risk-based corrective action gives the State flexibility in requiring different levels of cleanup based on scientific analysis of different site characteristics and allowing no action or no further action at sites that pose little risk to human health or the environment.
- b. A risk-based approach to the cleanup of environmental damage can adequately protect human health and the environment while preventing excessive or unproductive cleanup efforts, thereby assuring that limited resources are directed toward those sites that pose the greatest risk to human health and the environment.
- c. Risk-based corrective action has successfully been used to clean up contamination from petroleum underground storage tanks, as well as contamination at sites governed by other environmental programs.

(2) The General Assembly intends the following:

- a. To direct the Commission to adopt rules that will provide for risk-based assessment and cleanup of discharges and releases of petroleum from aboveground storage tanks and other sources. These rules are intended to combine groundwater standards that protect current and potential future uses of groundwater with risk-based analysis to determine the appropriate cleanup levels and actions.
- b. That these rules apply to all discharges or releases that are reported on or after the date the rules become effective in order to ascertain whether cleanup is necessary, and if so, the appropriate level of cleanup.
- c. That these rules may be applied to any discharge or release that has been reported at the time the rules become effective at the discretion of the Commission.
- d. That these rules, and decisions of the Commission and the Department in implementing these rules, facilitate the completion of more cleanups in a shorter period of time.

(b) The Commission shall adopt rules to establish a risk-based approach for the cleanup of discharges and releases of petroleum from aboveground storage tanks and other sources. At a minimum, the rules shall address all of the following:

- (1) The circumstances where site-specific information should be considered.
- (2) Criteria for determining acceptable cleanup levels.
- (3) The acceptable level or range of levels of risk to human health and the environment. Rules that use the distance between a source area of a confirmed discharge or release to a water supply well or a private drinking water well, as those terms are defined under G.S. 87-85, shall include a determination whether a nearby well is likely to be affected by the discharge or release as a factor in determining levels of risk.
- (4) Remediation standards and processes.
- (5) Requirements for financial assurance, where the Commission deems it necessary.

- (6) Appropriate fees to be applied to persons who undertake remediation of environmental contamination under site-specific remediation pursuant to this Part to pay for administrative and operating expenses necessary to implement this Part and rules adopted to implement this Part.

(c) The Commission may require an owner, operator, or landowner to provide information necessary to determine the degree of risk to human health and the environment that is posed by a discharge or release of petroleum from an aboveground storage tank or other source.

(d) If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission, the Commission shall notify an owner, operator, or landowner who provides the information required by subsection (c) of this section that no cleanup, further cleanup, or further action will be required unless the Commission later determines that the discharge or release poses an unacceptable level of risk or a potentially unacceptable level of risk to human health or the environment. If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that requires further cleanup, the Commission shall notify the owner, operator, or landowner who provides the information required by subsection (c) of this section of the cleanup method approved by the Commission. This section shall not be construed to prohibit an owner, operator, or landowner from selecting a cleanup method other than the cleanup method approved by the Commission so long as the Commission determines that the alternative cleanup method will address imminent threats to human health and the environment.

(e) Remediation of sites with off-site migration shall be subject to the following provisions:

- (1) Contaminated sites at which contamination has migrated to off-site properties may be remediated pursuant to this Part if either of the following occur:
 - a. The person who proposes to conduct the remediation pursuant to this Part remediates the contaminated off-site property to unrestricted use standards.
 - b. The person who proposes to conduct the remediation pursuant to this Part (i) provides the owner of the contaminated off-site property with a copy of this Part and the publication produced by the Department pursuant to subdivision (2) of this subsection and (ii) obtains written consent from the owner of the contaminated off-site property for the person to remediate the contaminated off-site property using site-specific remediation standards pursuant to this Part. Provided that the site-specific remediation standards shall not allow concentrations of contaminants on the off-site property to increase above the levels present on the date the written consent is obtained. Written consent from the owner of the off-site property shall be on a form prescribed by the Department and include an affirmation that the owner has received and read the publication and authorizes the person to remediate the owner's property using site-specific remediation standards pursuant to this Part.
- (2) In order to inform owners of contaminated off-site property of the issues and liabilities associated with the contamination on their property, the Department, in consultation with the Consumer Protection Division of the North Carolina Department of Justice and the North Carolina Real Estate Commission, shall develop and make available a publication entitled

"Contaminated Property: Issues and Liabilities" to provide information on the nature of risk-based remediation and how it differs from remediation to unrestricted use standards, potential health impacts that may arise from residual contamination, as well as identification of liabilities that arise from contaminated property and associated issues, including potential impacts to real estate transactions and real estate financing. The Department shall update the publication as necessary.

- (3) If, after issuance of a no further action determination, the Department determines that additional remedial action is required for a contaminated off-site property, the responsible party shall be liable for the additional remediation deemed necessary.
- (4) Nothing in this subsection shall be construed to preclude or impair any person from obtaining any and all other remedies allowed by law.

(f) This section shall not be construed to limit the authority of the Commission to require investigation, initial response, and abatement of a discharge or release pending a determination by the Commission under subsection (d) of this section as to whether cleanup, further cleanup, or further action will be required. Notwithstanding any authority provided under this section to the Commission and the Department allowing use of a risk-based approach for the cleanup of discharges and releases of petroleum from aboveground storage tanks and other sources, a responsible party shall, at a minimum, do all of the following:

- (1) Perform initial abatement actions to (i) measure for the presence of a release where contamination is most likely to be present and to confirm the precise source of the release; (ii) determine the possible presence of free product and to begin free product removal immediately; (iii) continue to monitor and mitigate any additional fire, vapor, or explosion hazards posed by vapors or by free product; and (iv) submit a report summarizing these initial abatement actions within 20 days after a discharge or release. For purposes of this subdivision, the term "free product" means a non-aqueous phase liquid which may be present within the saturated zone or in surface water.
- (2) Remove, or in situ remediate, contaminated soil or free product that would act as a continuing source of contamination to groundwater. Actions conducted in conformance with this subdivision shall require approval by the Department.

(g) This section shall apply to discharges of petroleum from aboveground storage tanks and other sources not otherwise governed by the provisions of G.S. 143-215.94V. (2015-286, s. 4.7(b).)